

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Application of New Sunshine, LLC,

Petitioner,

Index No. 651761/2013

For an Order Pursuant to Article 75 of the CPLR
Staying Arbitration of a Certain Controversy,

STIPULATION AND
ORDER

-against-

Melania Marks Skincare LLC,

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for the parties, that Petitioner New Sunshine, LLC ("New Sunshine") will, on or before June 3, 2013, file a request for a temporary restraining order and a preliminary injunction in (i) an action entitled *Merchant Capital, LLC and New Sunshine, LLC v. Melania Marks Skincare LLC*, Cause Number 49C011305PL016127, in the State of Indiana in Marion County Circuit Court, or (ii) in the event Respondent Melania Marks Skincare, LLC ("Melania Marks Skincare") successfully removes the Marion County Circuit Court action to Indiana federal district court, in that federal court action (hereinafter the actions described in (i) and (ii) above shall be referred to as the "Indiana Action"), by which New Sunshine shall seek a TRO and preliminary injunction to enjoin and stay Respondent Melania Marks Skincare, as described in New Sunshine's Amended Complaint in the Indiana Action, from prosecuting the arbitration proceeding before JAMS in the State of New York pending a determination in the Indiana Action as to whether the License Agreement is void *ab initio* as pled in the Amended Complaint.

IT IS FURTHER STIPULATED AND AGREED that New Sunshine and Melania Marks

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EXHIBIT

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Skincare waive any and all objections relating to the jurisdiction of the State of Indiana over the parties and to determine New Sunshine's above-described application for injunctive relief and acknowledge that the Indiana Action or the State of Indiana is the forum in which New Sunshine's application for injunctive relief should be decided on its merits.

IT IS FURTHER STIPULATED AND AGREED that by executing this Stipulation Mejanía Marks Skincare LLC reserves all other rights, remedies and claims, including, without limitation the right to object to any TRO or injunctive relief on the merits or to seek appropriate relief in any appellate court or Federal Court.

IT IS FURTHER STIPULATED AND AGREED that this proceeding shall be discontinued on June 4, 2013, whether or not New Sunshine has successfully obtained a TRO and/or injunctive relief in the Indiana Action, it being understood and agreed that the TRO issued in this proceeding was issued solely to give New Sunshine time to seek the relief set forth above. The discontinuance is without prejudice, except with prejudice if New Sunshine's application for a TRO or injunctive relief is denied in the Indiana Action on any basis other than that New Sunshine's application for injunctive relief should be decided in the State of New York.

Dated: New York, New York
May 31, 2013

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ENTER:

OK
Hon. Cynthia S. Kern, J.S.C.

CYNTHIA S. KERN
J.S.C.